

## **REMARKS**

This amendment is submitted in connection with the attached request for continuation prosecution application pursuant to 37 CFR 1.114. A form PTO-2038 for the fee associated with an RCE is enclosed herewith. In addition to the fee for Request for Continued Prosecution, a petition to extend the time in which to respond to the Office Action for three months, up to and including July 28, 2010, along with a separate PTO-2038 is also enclosed.

The amendment and these remarks further responds to the Final Office Action dated January 28, 2010

### ***Response to the Examiner's Claim Objections***

In response to the Examiner's objection to claim 1, the applicant has amended the claim to correct the informalities. The Applicant gratefully acknowledges the Examiner's identification of each of the informalities and Section 112 issues.

### ***Response to the Examiner's Objection to the Specification***

In the Office Action, the Examiner continued the objecting to the specification and contends that it does not contain antecedent basis for the claimed subject matter recited in claim 3. The Applicant amended the specification in the response dated October 2, 2009 to include the statement "In an alternative embodiment, the top and bottom struts may be tied together using wire in tension." It is submitted that this disclosure is support for the claimed vertical tie means because the wire may tie together top and bottom struts and it is therefore in a vertical orientation. The support for the material in the specification was found in the claims as originally presented so a new matter was added to the application.

## Remarks

Claims 1, 2, 4-10, 14-20 and 24 stand rejected under 35 U.S.C. § 103(a) in view of the patent to Blum (5,136,822) in view of Russell (3,330,084).

### *I. The Amendment to the Claims Directed to the Thermal Break traverses the Rejections.*

In response to the rejection, the applicant has further amended the claims 1, 14, 18 and 25 to further distinguish the claimed invention from the prior art. In particular, the claims as now amended further require that at least one of the panels be surrounded by the thickness of a metal frame and that this frame element terminates at or before the peripheral edge of one of the panels. This feature of the invention provides for improved thermal characteristics of the panel. In this regard, in the invention recited in claim 1, the metal frame section that is exposed to the external environment is limited to the thickness of the frame and therefore the exposure of metal portion of the frame to the environment is significantly reduced compared to the panels of the prior art. Providing a further offset further reduces the exposure of the thermal transferring surfaces. The reduction of the exposure of metallic portions of the panel that are exposed to the external environment improves the thermal performance of the panel.

It is submitted that the claims as amended traverse the present rejection. As best seen in Fig. 4 of the Blum reference, the panels disclosed by Blum lack a frame element that completely surround the periphery of the panel that has channels that face outwardly. While the Examiner contends that it would have been obvious to substitute or the frame of Russell in the Blum system, it is submitted that the prior art does not teach, disclose or suggest minimizing the exposure of the frame to the external environment as disclosed and presently claimed. The support for this claimed feature is depicted in Figs 4 and 31. The Russell reference discloses a

significant lip or cap ( See Figs 1 and 2, reference numeral 7) that is exposed on both sides of the panels.

## ***II. The elongate strut panel connection system.***

In addition to the improved thermal properties, a further claimed feature that distinguishes the invention from the prior art relates to the assembly of the respective panels into a wall. It is submitted that, as understood by the Applicant, that the previous combination of references advanced by the Examiner (Russell and Blum) do not disclose the claimed feature wherein a plurality of adjacent panels are secured together by a extended horizontal top strut that is tied or connected to a bottom strut. In connection with this feature, Russell's frame includes a rounded channel so that the lateral sides of the panel can be secured using a tie rod. As best seen in Figs. 1 the channel on the top of the panel remains void. As best seen in Figs 1 and 3 of Russell, adjacent panels are capped on the top portion by channel plates 31 and 32 and then attached to adjacent panels using a plate 18 or 28.

In addition, it is submitted that Blum's system, as understood, does not use an elongate strut that is received in a channel formed in an peripheral frame. Fig. 16 depicts a flat plate that is attached to the top of the panels. Figs 13 and 14 are described as modified top and bottom channels. These channels apparently receive the panels. As previously discussed, Blum discloses using "overlapping fastening plates" to apparently connect the columns to the adjacent panels. Blum does not appear to disclose a strut, received in a channel of a frame, and extending across a plurality of panels such as disclosed by the applicant in Fig 1. (In addition, there does not appear to a horizontal elongate strut receive in the "W shaped channels of Blum. See Blum Fig. 1.) Rather, Blum discloses a top channel plate 136 that rests on the top of the

outside wall surface which is not disclosed in any further detail. See Blum column 4 lines 41-48. This plate does not appear to be received in the dual channels depicted on the top of the panels. Figs 13 shows a bottom channel plate and Fig 14 a modified top channel plate. However, it is unclear how the top channel plate is engages the panels. In any event, these plates are not the same as the frames disclosed by the applicant. In summary, the claimed panels and method of attachment are significantly different than those disclosed by Blum.

***III. The Blum reference does not disclose providing an adhesive between the panels .***

The applicant continues to respectfully disagree with the Examiner with respect to the adhesive limitation set forth in claim 1, 14, 15, 18 and 25. While polyurethane that is disclosed by Blum may function as an adhesive, it does not necessarily function as an adhesive. For example, skateboard wheels are often made from polyurethane and they are not “adhesive.” Likewise, extruded polystyrene is not adhesive after it has been cured. “Extruded polystyrene foam begins with solid polystyrene crystals. The crystals, along with special additives and a blowing agent, are fed into an extruder. Within the extruder the mixture is combined and melted, under controlled conditions of high temperature and pressure, into a viscous plastic fluid. The hot, thick liquid is then forced in a continuous process through a die. As it emerges from the die it expands to a foam, is shaped, cooled, and trimmed to dimension. This continuous extrusion process results in a unique foam product with a uniform closed-cell structure, a smooth continuous skin, and consistent product qualities.” See [www.diversifoam.com/xens.htm](http://www.diversifoam.com/xens.htm). Polyisocyanurate is currently also used in a cured state and provided in board form. Fiberglass insulation is also not and adhesive as conventionally used and understood in the building industry. In summary, it is submitted that the Blum’s does not disclose the use of adhesive.

In connection with Claim 2, the Applicant does not rely upon tie rods for patentability but the claim is allowable in view of the limitations recited in the respective independent claims.

In connection with Claim 3, the Applicant does not rely upon the wire ties for patentability but the claim is allowable in view of the limitations recited in the respective independent claims.

Claim 4 has been withdrawn in view of the previous amendment to claim 1 made on October 2, 1009.

In connection with Claim 5, the Applicant does not rely upon the shape of the channel for patentability but the claim is allowable in view of the limitations recited in the respective independent claim.

In connection with Claim 6 and 7, the Applicant does not rely upon the use of gypsum board for patentability but the claims are allowable in view of the limitations recited in the respective independent claims.

The application incorporates its arguments above relating to the adhesive got with respect to claim 8.

In connection with claims 9-12, the Applicant does not rely upon the shape of the panels for patentability but the claims are allowable in view of the limitations recited in the respective independent claims.

In connection with claims 13, 21 and 22, the Applicant does not rely upon the strip limitation or hook and loop fasteners for patentability but claim 21 is allowable in view of the limitations recited in the respective independent claims.

It is submitted claim 14 is allowable for the same reasons recited in connection with claim1.

In connection with claim 15, the Applicant respectfully disagrees with the Examiner for the reasons discussed above relating to the adhesive materials.

In connection with claim 16, the Applicant does not rely upon the function of the panel for patentability but claim 16 is allowable in view of the limitations recited in the respective independent claim.

In connection with claim 17, the Applicant does not rely upon setting the panel next to a corner panel for patentability but claim 17 is allowable in view of the limitations recited in the respective independent claim.

In connection with claim 18, the claim is allowable for the first and third reasons recited with respect to claim1.

In connection with claims 19 -22 the Applicant does not rely upon the location of the channel for patentability but the claims are allowable in view of the limitations recited in the respective independent claim.

It is submitted that Claim 23, as amended is further allowable. The claim is directed to the feature illustrated in Figs. 36 and 38. While the use of a chase may be well know, the present case is provided in a structural panel while maintain its structural strength to support forces imposed on the top of the panel. It is submitted that the provision of a chase as recited and claimed is a patentable improvement not suggested by Blum or any of the prior art of record.

In connection with claim 24, the applicant does not rely upon the foam sleeve for patentability but claim 24 is allowable in view of the limitations recited in the respective independent claims


It is submitted that claim 25 is allowable in view of the present amendments to the independent claims.

In connection with claim 26, the applicant does not rely upon the adhesive alone patentability but claim 26 is allowable in view of the limitations recited in the respective independent claim.

**Conclusion**

Wherefore, it is submitted that each of the examiner's objections and rejections have been traversed and the case is now in condition for allowance.

Respectfully submitted,

  
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**Certificate of Mailing**

I hereby certify that on this 28<sup>nd</sup> day of June 2010, copies of the foregoing Amendment and Remarks was sent postage prepaid to:

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